

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5281 of 2005****For Approval and Signature:****HON'BLE MR JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

MATHURBHAI MAGANBHAI PARMAR - Respondent(s)

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Appearance :

Mr. HD Dave, AGP for Petitioner No(s).: 1.
RULE SERVED BY DS for Respondent No(s).: 1.
MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH**Date : 22/07/2005****ORAL JUDGMENT**

In this petition under Article 226/227 of the Constitution of India, the petitioner State of Gujarat has challenged the legality and validity of the judgment and award passed by the Labour Court, Kalol, dated 31st August 2004 in Reference (LCK) No.

138 of 1998 in allowing the said Reference by directing the petitioner to reinstate the respondent workman with full backwages with continuity of service.

2. It was the case of the respondent workman that he was serving as Daily Wager Chowkidar since 1984 and all of a sudden his services came to be terminated with effect from 14th June 1997. Being aggrieved and dissatisfied with the termination with effect from 14th June 1997 the respondent workman raised an industrial dispute which came to be referred to Labour Court, Kalol for adjudication being Reference (LCK) No. 138 of 1998. It was the case on behalf of the petitioner that respondent workman was not a permanent employee and he was a daily wager who has never completed 240 days in any of the year more particularly in the last preceding year; as soon as the work was over as his services were not required the respondent was not called for duty; and therefore there is no question of breach of Section 25-F of the Industrial Disputes Act, 1947 and/or Section 25-B of the Industrial Disputes Act, 1947 {"the I.D. Act" for short}. To prove that the respondent workman has not completed 240 days in the last preceding year it was submitted that in the year 1997 the workman worked for 186 days only. The Labour Court, Kalol, by Judgment and Award dated 31st August 2004 allowed the said Reference by directing the petitioner to reinstate the respondent workman

with full backwages with continuity of service with effect from 14.6.1997 by holding that the respondent workman has completed 240 days in the last preceding year and as before terminating his services the procedure as required under the provisions of the I.D. Act was not followed there is a breach of Section 25-F of the I.D. Act. Feeling aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Kalol, dated 31st August 2004 in Reference (LCK) No. 138 of 1998.

3. Shri Hasit D. Dave, learned AGP appearing for the State has vehemently submitted that the Labour Court has materially erred in holding that the respondent workman has completed 240 days in the last preceding year which finding is contrary to the evidence on record. It is submitted that in the written statement and reply to the statement of claim itself it is specifically submitted on behalf of the petitioner that the respondent workman has not completed 240 days in any of the year and more particularly in the last preceding year and a statement of working days of the respondent workman was also produced in the reply to the statement of claim still only on the ground that the petitioner had not produced the muster roll for the relevant period and shifting the onus upon the petitioner to prove that the workman has not completed 240 days, the Labour Court has drawn adverse inference and has held that the

respondent workman has completed 240 days in the last preceding year which is contrary to the Judgment of the Hon'ble Supreme Court in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another reported in (2004) 8 SCC Page 161; in the case of Municipal Corporation, Faridabad Vs. Shri Niwas, reported in (2004) 8 SCC Page 195; and in the case of Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Another reported in AIR 2005 Supreme Court Weekly 3160. Relying upon the aforesaid decisions of the Hon'ble Supreme Court, Shri Dave, learned AGP has submitted that in fact initially it is the workman who has to prove that he has worked for more than 240 days in the last preceding year and in absence of any proof submitted on behalf of the respondent workman only on the ground that muster roll is not produced no adverse inference was required to be drawn.

3.1. It is also further submitted that in fact the respondent workman was serving as a Daily Wager Chowkidar and as there was no work available, he was not called for the duty and therefore there is no question of payment of retrenchment compensation as required under Section 25(F) of the I.D. Act. Under the circumstances it is requested to allow the present Special Civil Application.

4. On the other hand, Shri Mukesh H. Rathod, learned advocate appearing on behalf of the

respondent workman has opposed the petition and has submitted affidavit-in-reply along with deposition of the respondent workman as well as of the witness who was examined on behalf of the petitioner. Relying upon the deposition of the workman it is submitted that as the identity card was not being given by the petitioner it was not possible for the petitioner to produce any document in support of their submission that the workman has completed more than 240 days in the last preceding year and under those circumstances due to non-production of muster roll which was supposed to be in possession of the petitioner the Labour Court has rightly drawn the adverse inference and has rightly held that the respondent workman has completed more than 240 days in the last preceding year. It is further submitted that the Labour Court has rightly held that there is a breach of Section 25(F) of the I.D. Act while terminating the services of the respondent workman with effect from 14th June 1997 for the reason that though the respondent workman has completed more than 240 days in the last preceding year neither any retrenchment compensation is paid nor any notice of pay was given. Under the circumstances it is requested to dismiss the Special Civil Application. Alternatively he has submitted that if this Court is not satisfied with regard to the evidence showing completion of 240 days by the respondent workman in

that case the matter may be remanded to the Labour

Court for its fresh decision.

5. Heard the learned advocates appearing for the parties. It is not in dispute that the respondent workman was serving as a Daily Wager Chowkidar. It was the specific case on behalf of the petitioner that in none of the years more particularly in the last preceding year the respondent workman has completed more than 240 days. It is also not in dispute that in the reply to the statement of claim itself the petitioner has submitted the statement of working days of the respondent workman in each year starting from 1991 till 1998 and on going through the same it appears that in none of the years the respondent workman has completed more than 240 days. Only on non-production of the muster roll the Labour Court has drawn the adverse inference and has held that the petitioner has tried to withheld the relevant evidence and therefore the respondent workman has completed 240 days, i.e., to say in the last preceding year 1997 in last 6 months the respondent had worked for 120 days. On going through the evidence on record, it appears that the respondent workman has not produced any documentary evidence to prove his case that he has worked for 240 days in the last preceding year. Even in the deposition, he has never stated that he has completed 240 days in the last preceding year. Thus, the respondent workman has failed to prove his case

that he has worked for 240 days in the last preceding year. As per the ratio laid down in the aforesaid Judgments of the Hon'ble Supreme Court, the burden is upon the workman to prove that he has worked for 240 days in the last preceding year and non-production of muster roll by the employer will not put the respondent-workman in an advantageous position and that no adverse inference can be drawn in favour of respondent workman that he has worked for 240 days in the last preceding year, but the onus is upon the respondent workman to prove that he has worked for 240 days in the last preceding year. Under the circumstances, the finding of the Labour Court, in the present case, that as the petitioner has not produced the muster roll, the workman has completed 240 days, is erroneous and contrary to the law laid down by the Hon'ble Supreme Court in the aforesaid decisions. As stated herein above, apart from the fact that there is no documentary evidence produced by the respondent workman to prove that he has worked for 240 days in the last preceding year, even it is not his case in the evidence/deposition that he has completed 240 days in the last preceding year. The only thing which finds favour with the respondent workman is that he is working since 1964 as submitted by the respondent workman. In absence of any specific assertion by the respondent workman, the Labour Court was not justified in giving a finding that the respondent workman has worked for 240 days

in the last preceding year, and consequently the finding of the Labour Court that there is a breach of Section 25(F) of the I.D. Act is also erroneous and the same requires to be quashed and set aside. It is also required to be observed that even in the reply to the statement of claim from the very beginning it is the case of the petitioner that in none of the years the respondent workman has completed 240 days. Not only that, but the petitioner had also given Statement of Working Days from which it appears that in none of the years the respondent workman has completed 240 days. Under the circumstances, the judgment and award passed by the Labour Court requires to be quashed and set aside. However, looking to the facts and circumstances of the case, the matter requires to be remanded to the court below so that the respondent workman can produce evidence, if any, to prove that he has completed 240 days in the last preceding year. This indulgence is shown considering the submissions made on behalf of the learned advocate appearing on behalf of the respondent that the respondent might have some document to prove that he has worked for 240 days in the last preceding year.

6. For the reasons stated herein above, the petition succeeds. The judgment and award passed by the Labour Court, Kalol, dated 31st August 2004 in Reference (LCK) No. 138 of 1998 is hereby quashed and

set aside. The matter is remanded to the Labour Court, Kalol, for deciding the same afresh in accordance with law and on merits. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

RMR